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WASHINGTON, DC 20463

2012 MAY 1 AM 9:10

FIRST GENERAL COUNSEL'S REPORT

CELA

Pre-MUR 533

DATE RECEIVED: March 13, 2012

DATE ACTIVATED: April 10, 2012

EARLIEST SOL: March 7, 2017

LATEST SOL: March 11, 2017

SOURCE:

American Future Fund

RELEVANT STATUTES:

2 U.S.C. § 434(f)

2 U.S.C. § 441d

11 C.F.R. § 100.29

11 C.F.R. § 104.20

11 C.F.R. § 110.11

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

**I. INTRODUCTION**

Pre-MUR 533 was initiated by a *sua sponte* submission ("Submission") filed on behalf of the American Future Fund ("AFF" or "Respondent"). In March 2012, AFF disbursed \$29,205.63 for a cable television advertisement that was intended for broadcast in the Commonwealth of Virginia at a time when there was no upcoming federal election in Virginia within 30 days. Due to a cable broadcasting practice that AFF claims to have been previously unaware of, the advertisement also aired in parts of Maryland and the District of Columbia, where federal elections, namely presidential primaries, were scheduled within 30 days. Thus, when broadcast in Maryland and the District of Columbia, the ad qualified as an electioneering communication; however, AFF failed to file timely disclosure reports or include a complete

1 disclaimer on the communication, as required by the Federal Election Campaign Act of 1971, as  
2 amended ("the Act") and its implementing regulations.

3 Upon learning of the Maryland and District of Columbia broadcasts, AFF took prompt  
4 corrective action including the cessation of the broadcasts, the filing of belated electioneering  
5 communication disclosure reports with the Federal Election Commission ("Commission"), and  
6 the filing of its *sua sponte* submission.

7 Respondent acknowledges in the Submission that the ad did not include a proper  
8 disclaimer, and the disclosure reports were not filed within 24 hours of the communications.  
9 Accordingly, we recommend that the Commission find reason to believe that AFF violated  
10 2 U.S.C. §§ 434(f) and 441d by failing to properly report and include proper disclaimers on the  
11 communications aired in Maryland and the District of Columbia.

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14 **II. FACTUAL AND LEGAL ANALYSIS**

15 **A. Factual Background**

16 American Future Fund is a 501(c)(4) organization that describes itself as a "multi-state  
17 issues advocacy group designed to effectively communicate conservative and free market  
18 ideals." See <http://americanfuturefund.com>. It is registered with the Commission and has filed a  
19 number of electioneering communication reports since its founding in 2008.

20 The Commonwealth of Virginia held its presidential primary on March 6, 2012. The  
21 State of Maryland and the District of Columbia held their presidential primary elections on  
22 April 3, 2012. President Obama was a candidate for the Democratic Party's presidential  
23 nomination in primary elections held in all three jurisdictions.

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1 Respondent produced and distributed a broadcast advertisement entitled "Wall Street"  
2 intended to air on cable television in Virginia from March 7 to March 13, 2012. Submission at 1.  
3 The \$29,205.63 ad criticizes President Obama's connection to Wall Street executives, featuring  
4 television footage of the President and directing viewers to, "tell President Obama to come clean  
5 about his Wall Street ties." American Future Fund, *Wall Street* (Feb. 27, 2012),  
6 <http://americanfuturefund.com/aff-launches-tv-ad-obamas-wall-street>. The ad also contains a  
7 written disclaimer identifying AFF's web address and stating that it was "Paid for by American  
8 Future Fund." *Id.*

9 Due to a broadcast practice known as the Designated Market Area ("DMA")  
10 Interconnect, of which AFF asserts it was unaware, the ad also aired in Maryland and the District  
11 of Columbia.<sup>1</sup> Submission at 1-2. When AFF's buyer placed an ad buy for "Wall Street"  
12 through the DMA Interconnect in Virginia, which had already held its presidential primary, the  
13 ~~ad was also transmitted to cable households in Maryland and the District of Columbia, and it was~~  
14 aired within 30 days of their April 3, 2012 presidential primaries. Submission at 1-2.

15 When Respondent became aware that "Wall Street" was also running in Maryland and  
16 the District of Columbia, it took immediate action to prevent any further broadcast in these  
17 jurisdictions; instead of running through March 13, the ad only aired until March 11, 2012. *Id.*  
18 at 2. Respondent also immediately filed two electioneering communications reports (FEC  
19 Form 9) to disclose the disbursements made for these communications. *Id.* at 1-2. *See also* FEC  
20 Forms 9 filed March 12, 2012. Finally, Respondent filed this *sua sponte* submission with the

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<sup>1</sup> A DMA Interconnect is a large group of cable systems within a particular geographic area that are connected, in that an advertiser can reach all of the cable households within a given market with one ad buy. *See* CABLETELEVISION ADVERTISING BUREAU, *Local Cable FAQ's*, <http://www.thecab.tv/main/cablenetworks/localcablefaq/> (last visited April 18, 2012).

Commission on March 13, disclosing that it had failed to timely file the disclosure reports for and include a proper disclaimer on these communications.

**B. Legal Analysis**

A person who makes an aggregate disbursement of \$10,000 or more to produce and air electioneering communications must file disclosure reports with the Commission within 24 hours of making the communication. 2 U.S.C. § 434(f); 11 C.F.R. § 104.20. The Act defines "electioneering communication" as a broadcast, cable, or satellite communication that refers to a clearly identified federal candidate and is publicly distributed within either 60 days before a general election for the office sought by that candidate or 30 days of a primary election in which the candidate referenced is seeking the nomination of a political party. 2 U.S.C. § 434(f)(3)(A); 11 C.F.R. § 100.29.

When a person who is not a candidate or authorized political committee makes a disbursement for an electioneering communication, such communication must include a disclaimer stating the name and permanent street address, telephone number or World Wide Web address of the person who paid for the communication, and state that the communication was not authorized by any candidate or the candidate's committee. 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11(b)(3). Further, disclaimers on television ads must include an audio statement as to who or what group is responsible for the content of the advertisement. 2 U.S.C. § 441d(d)(2); 11 C.F.R. § 110.11(c)(4)(i)-(ii).

"Wall Street" clearly features President Obama, and the ad aired on cable television within 30 days of the presidential primaries in Maryland and the District of Columbia. The ad thus constitutes an electioneering communication pursuant to 2 U.S.C. § 434(f). Respondent paid \$29,205.63 to produce and distribute the ad in Virginia, Maryland, and the District of

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1 Columbia. The portion of these costs allocable to the ad's broadcast in Maryland and the District  
2 of Columbia exceeds the \$10,000 threshold provided by the statute, and therefore Respondent  
3 should have filed disclosure reports within 24 hours of making the communications, by March 8.  
4 However, Respondent did not file the disclosure reports until March 12. Accordingly, we  
5 recommend that the Commission find reason to believe that AFF violated 2 U.S.C. § 434(f) by  
6 failing to file the electioneering communication reports on time.

7 Additionally, although the ad contained a written disclaimer stating that it was "Paid for  
8 by American Future Fund" and identifying AFF's web address, it did not include a statement that  
9 the communication was not authorized by any candidate or candidate's committee, or an audio  
10 statement as to who or what group is responsible for the content of the advertisement.

11 Accordingly, we also recommend that the Commission find reason to believe that AFF violated  
12 2 U.S.C. § 441d by failing to fully comply with the disclaimer requirements for electioneering  
13 communications.

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16 **IV. RECOMMENDATIONS**  
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- 18 1. Open a MUR in Pre-MUR 533.  
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20 2. Find reason to believe that American Future Fund violated 2 U.S.C. §§ 434(f) and  
21 441d.  
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3.

4. Approve the attached Factual and Legal Analysis.

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6. Approve the appropriate letters.

BY:

4/30/12  
Date

Anthony Herman  
General Counsel

  
Daniel A. Petalas  
Associate General Counsel

  
Mark D. Shonkwiler  
Assistant General Counsel

  
Margaret Ritzert Howell  
Attorney